STATE OF MICHIGAN

COURT OF APPEALS

KARNI WARDA FRANK, M.D.,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEM, and METRO MEDICAL GROUP, d/b/a HENRY FORD HEALTH SYSTEM,

Defendants-Appellees,

and

SUSAN SCHOOLEY,

Defendant.

UNPUBLISHED
March 26, 1999

No. 201419
Wayne Circuit Court
LC No. 96-629037 NZ

Before: Kelly, P.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

This case arises from the termination of plaintiff's employment as a physician with defendant Metro Medical Group ("Metro"), which was purchased by defendant Henry Ford Health System ("Henry Ford"). Defendant Schooley is the Chief of Family Practice for Henry Ford. In her complaint against defendants, plaintiff alleged claims of age discrimination, defamation, and compelled self-defamation. However, the lower court found that plaintiff's claims were barred by her signed contractual release and granted defendants' motion for summary disposition. Plaintiff appeals as of right from the order. We affirm.

The lower court did not specify which subpart of MCR 2.116(C) it was relying upon in its order granting defendants' motion for summary disposition, although in its opinion from the bench the court referenced both MCR 2.116(C)(7) and MCR 2.116(C)(8). Because the dispositive issue is whether plaintiff's claims were barred by the release, we treat the motion as having been granted pursuant to MCR 2.116(C)(7). See *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997) ("If summary disposition is granted under one subpart of the court rule when it was actually appropriate

under another, the defect is not fatal and does not preclude appellate review as long as the record permits review under the correct subpart.").

We review a summary disposition determination de novo as a question of law. *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App 363, 365; 579 NW2d 374 (1998). A court properly grants a motion for summary disposition pursuant to MCR 2.116(C)(7) where there exists a valid release of liability between the parties. *Wyrembelski v City of St Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1997). A release of liability is valid if it is fairly and knowingly made. *Id.* When reviewing a motion for summary disposition granted pursuant to MCR 2.116(C)(7), we must accept the plaintiff's well-pleaded allegations as true and construe them in a light most favorable to the plaintiff. *Stabley, supra* at 365.

Plaintiff first proffers several arguments concerning the validity of the release.[1] Plaintiff argues that the release was invalid based on misrepresentation because defendants' agent made certain oral statements to her that either varied or misrepresented the written terms of the release. We decline to review the merits of this argument because plaintiff failed to make this argument before the lower court ruled on defendants' motion for summary disposition. Indeed, plaintiff specifically informed defendants in her answer to their motion for summary disposition that she was not making a claim of misrepresentation. Although plaintiff subsequently made the misrepresentation argument in her motion for reconsideration of the court's decision, we cannot say that the lower court abused its discretion in denying plaintiff's motion because plaintiff's motion for reconsideration rested on a legal theory and facts that could have been timely pled or argued. See, e.g., *Charbeneau v Wayne County General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Plaintiff argues that the release was also invalid based on duress because she signed it only to avoid losing her medical career. In order to void a contract on the basis of economic duress, the wrongful act or threat must deprive the victim of her unfettered will. *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991). We simply do not share plaintiff's conviction that Metro committed a wrongful act or pronounced a threat when it expressed its intent to comply with a federal law requiring health care facilities to disclose to a data bank any denial of privileges to a physician. Because plaintiff has not shown that she was deprived of her unfettered will, duress does not provide a basis for voiding the release.

Plaintiff argues that the release is also facially invalid because the intent of the parties regarding the amount of consideration is not clear from the face of the release. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Rinke v Automotive Moulding Co*, 226 Mich App 432, 435; 573 NW2d 344 (1997). Here, paragraph 11 in the release stated that the amount of consideration agreed upon by the parties was a lump sum representing two months of plaintiff's salary. The amount was expressed in writing and parenthetically in numbers thereafter. The amount as expressed in writing stated the correct consideration. The amount as expressed in numbers contained a typographical error, but this error was corrected in handwriting on the face of the document. Further, we note that plaintiff was paid the amount stated in writing. On these facts we are persuaded that only one interpretation could reasonably be inferred from this clause. Therefore, ambiguity does not provide a basis for voiding the release.

Next, plaintiff argues that even if the release is valid, summary disposition was nonetheless improperly granted because the release only bars claims arising from her discharge by Metro and could not bar her claim against Henry Ford for refusing to hire her because she was never an employee of Henry Ford. We disagree. The scope of a release is controlled by the intent of the parties as it is expressed in the release. *Rinke, supra* at 435; *Wyrembelski, supra* at 127. Here, paragraph 6 in the release unambiguously states that plaintiff agreed not to seek damages for Henry Ford's failure to employ her. The release also states that plaintiff agreed to release and discharge "HFHS of any claims (whether known or unknown) that she may have against HFHS arising during the course of or out of EMPLOYEE's employment with HFHS." The term "HFHS" is defined in the release to encompass "HENRY FORD HEALTH SYSTEM, METROPOLITAN MEDICAL GROUP, HEALTH ALLIANCE PLAN, HENRY FORD HOSPITAL, HENRY FORD HEALTH CORPORATION, and their past, present, and future subsidiaries, division, departments, trustees, agents, employees, officers, directors, representatives, successors, and assigns." Therefore, whether plaintiff characterizes her claim as a failure to hire or a wrongful termination is inconsequential because these clauses reveal that the parties' clear intent was for the release to encompass claims against both Henry Ford and Metro. Plaintiff's argument is thus without merit.

Next, plaintiff argues that summary disposition was improperly granted because the court's decision was based on improper findings of fact. We disagree. Our review of the record indicates that during the hearing on defendants' motion, the court referred to the intent of the parties and that the court made speculative comments about defendants' merger. However, it is clear from the court's opinion from the bench that the court did not make a finding of fact about the parties' intent, nor did the court base its decision to grant defendants' summary disposition on its speculations. Rather, the court applied the correct standard for determining the scope of the release signed by the parties, see *Rinke, supra* at 435, and properly based its decision to grant summary disposition in defendants' favor solely because the release barred plaintiff's claims, see *Wyrembelski, supra* at 127.

Last, plaintiff argues that the lower court abused its discretion in denying her motion for leave to amend her complaint to add a claim of interference with prospective business expectancy, which was based on plaintiff's alleged hardship in telling potential employers the reason why her employment was terminated.[2] Absent an abuse of discretion that results in injustice, this Court will not reverse a lower court's decision on a motion to amend a complaint. *Price v Long Realty, Inc*, 199 Mich App 461, 469; 502 NW2d 337 (1993). While leave to amend should be freely given when justice so requires, leave may be denied where an amendment would be futile. MCR 2.118(A)(2); *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 78; 480 NW2d 297 (1991). "An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face." *Id.*

Because the lower court had properly granted defendants summary disposition on the basis of the parties' release, it was not an abuse of discretion for the court to deny plaintiff's motion to amend her complaint. Plaintiff's proposed amendment was futile because the new claim would have been barred by the release. Plaintiff specifically released defendants from any known or unknown claims arising during the course of or out of her employment, irrespective of when such claims occurred or accrued. Plaintiff presented no facts to support her assertion that the release would not bar the new

claim because it arose after the release was signed. Similarly, plaintiff failed to establish that the new claim did not arise out of or during the course of her employment. Thus, the lower court did not abuse its discretion in denying plaintiff's motion to amend her complaint.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

[1] Plaintiff also argued in her brief on appeal that summary disposition was improperly granted pursuant to MCR 2.116(C)(7) because she rescinded the release by tendering back the consideration she received for resigning and releasing defendants from any and all claims. However, at oral argument, plaintiff conceded that tender back of consideration is by itself insufficient to set aside a release.

[2] Although plaintiff's original complaint included a claim for alleged compelled self-defamation, plaintiff also argued below and on appeal that she should be allowed to amend her complaint to add such a claim.